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May 21, 2020

VIA ECF

UNITED STATES V. SETH FISHMAN, 20-CR-160-7-MKV (SDNY)

RE: Response to Government's Letter Concerning their Time to Respond to Motion for Bill of Particulars

Dear Judge Vyskocil:

The Government's position – that they can just avoid filing a response to a motion for a bill of particulars calling into question the validity of the indictment – is meritless. The essence of the Motion is that a bill of particulars *must* be filed now or Counts 1-2 should be dismissed because Counts 1-2 fail to state an offense under 12(b)(3) and fail to provide sufficient information to allow Dr. Fishman (and the other defendants) to prepare a meaningful defense. Dkt. 202 at 1, 24.

The quality and quantity of any discovery cannot cure an Indictment which, absent a bill of particulars, should be dismissed because such Indictment fails to provide information necessary to prepare a defense. And, waiting around to hear Dr. Fishman's Motion until discovery is complete which will take several additional weeks, if not months, is an unacceptable proposal especially where, as here, the Government has had all of Dr. Fishman's records, devices, emails, etc. since no later than October of last year when he was arrested at the Miami airport. It is also not what *Bortnowsky* holds. *United States v. Bortnowsky*, 820 F. 2d 572, 574 (2d Cir. 1987) Indeed, to the contrary, *Bortnowsky* and all the cases cited in the Motion make it plain that in multi-defendant cases involving "mountains of discovery" a bill of particulars is *particularly* necessary. Dkt. 202 at 7-9 (citing cases). Here, we have a 19 defendant case with 4 conspiracies and "mountains of discovery."

In addition, on May 9, 2020, the undersigned provided a detailed letter in accordance with Local Rule 16.1 to the prosecutors regarding a bill of particulars. **Ex. A** to Dkt. 202. The Government rebuffed that request so Dr. Fishman filed the

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Motion on May 14, 2020 (a week ago). Dkt. 202. The Government, in their letter, also asks for an extension of the time to file a response in their letter, but never conferred with counsel about that extension although the undersigned would consent to an additional 7 days (May 28, 2020).

The Government should not be permitted to shirk their obligations as federal prosecutors to file indictments which adequately allege offenses, or file bills of particulars to correct their deficiencies. Thus, the request to roll over the date to file a response until after the June 30, 2020 conference which is 6 weeks from now and approximately 4 months after the filing of the indictment which is at issue should be denied.

The undersigned also suspects that what the Government is doing is asking the court for more time to delay any responsive filing because, as they have already represented at the April 2, 2020 status conference, they anticipate potentially superseding this Indictment. Again though, regardless of whether the prosecutors decide to supersede or not at a later time --- assuming they can secure a quorum to return indictments before the June 30, 2020 conference --- the Government should be required to file a response to Dr. Fishman's motion and/or they should dismiss Counts 1-2 under Fed. R. Crim. P. 48.

Accordingly, we respectfully request that this Honorable Court issue an order requiring that the Government to respond to the Motion (Dkt. 202) by or before May 28, 2020.

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Respectfully submitted,

s/Andrew S. Feldman

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